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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,)
9) No. CR-09-172-LRS-1
10 Plaintiff,)
11)
12) DEFENDANT CLINTON HALBERT'S
13 v.) TRIAL MEMORANDUM
14)
15 CLINTON L. HALBERT,)
16)
17)
18 Defendant.)

19 To: JAMES MCDEVITT, United States Attorney

20 To: THOMAS HANLON, Assistant United States Attorney

21 COMES NOW THE DEFENDANT, Clinton Halbert, by and through
22 his counsel, John P. Nollette, and respectfully submits his trial
23 memorandum.

24 I. FACTS

25 For the purpose of this memorandum, the defendant generally agrees
26 to the outline of facts as presented in the Government's memorandum in
support of its motion in limine regarding medical marijuana and the
DEFENDANT CLINTON HALBERT'S
TRIAL MEMORANDUM- 1

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1 submitted trial memorandum.

2 The defendant, however, disagrees with three aspects of the
3 conclusions that the government presents.
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5 1. The defendant should be entitled to present his theory of the case
6 regarding any marijuana that is proved to have been grown on the
7 defendant's property. This is a well-settled principle of the law
8 and is so basic, that a fair trial cannot be obtained without
9 permitting the defendant's theory to be presented to the jury.
10 United States v. Hilda Escobar de Bright, 742 F.2d 1196 (9th Cir.
11 1984). Failure to present the defendant's theory of the case has
12 been held to be reversible per se and cannot be considered to be
13 harmless error. Id.
14

15 2. The second has to do with the conspiracy allegation. In addition
16 to a full outline of all the facts in the case, the drug conspiracy
17 alleged herein is a specific intent crime. It requires the
18 government to prove that the defendant voluntarily and
19 "intentionally" violated the law. United States v. Basey 816 F.2d
20 980, 1002 (5th Cir. 1987); United States v. Gomez, 776 F.2d 542,
21 548-49 (5th Cir. 1985). Without a presentation of what actually
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1 occurred and by whom, the defendant's theory and the
2 requirement that the government prove specific intent would deny
3 the defendant a fair trial.
4

- 5 3. The third and related aspect of why the presentation of evidence
6 regarding the cultivation of marijuana must be presented to the
7 jury is so that the jury can makes its decision with full knowledge
8 of the time, place and circumstances of the acts which form the
9 basis for the alleged crime. The jury cannot be expected to make
10 its decision in a void. United States v. Daly, 974 F.2d 1215, 1216
11 (9th Cir. 1992), (quoting United States v. Moore, 735, F.2d 289,
12 292 (8th Cir. 1984), United States v. Steele Smith, et al, 2008 U.S.
13 Distr. LEXIS 35734 (Order re: Plaintiff's Motion to Suppress,
14 published)
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19 II. CONCLUSION

20 For the reasons and law stated herein, the defendant prays that
21 the Court permit evidence demonstrating the full context and rationale of the
22 marijuana cultivation on the defendant's property. Considering that the
23 government is seeking to forfeit the defendant's home and property, and the
24 other potential penalties involved in this indictment, a full explanation of the
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26

1 circumstances ought to be presented for defendant to receive a fair and just
2 trial.

3
4 Dated this 24th day of June, 2010.

5
6 s/John P. Nollette

7 John P. Nollette, WSBA # 5474

8 Attorney for Defendant Clinton Halbert
9
10
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12 CERTIFICATE OF SERVICE
13

14 I hereby certify that on the 24th day of June, 2010, I electronically filed the
15 foregoing with the Clerk of the Court using the CM/ECF System which will send
16 notification of such filing to the following, and/or I hereby certify that I have
17 mailed by United States postal Service the document to the following non-CM-ECF
18 participant(s):

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19 Assistant United States Attorney
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22 Frank Cikutovich
23 Attorney at Law
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26 s/John P. Nollette

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Attorney for Defendant Clinton Halbert

DEFENDANT CLINTON HALBERT'S
TRIAL MEMORANDUM- 4

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